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The Constitutionality of Curfew Ordinances

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disabilities but a pardon will most probably dissipate all but the disabilities numbered 4, 5, and 6.

The modern trend is toward rehabilitation and restoration of rights. Rehabilitation should begin where the punishment terminates, and it should be the duty of society as reflected in statutes and court decisions to give the criminal an opportunity to prove his ability and merit to become once again a law-abiding, self-supporting member of the community restored to the full rights and privileges of citizenship.

Statutes such as Wyoming's which seem to impose minimum disqualifications on the convicted one are in accord with the effort to keep pace with society's increased sense of social consciousness. It is to be hoped that when the Supreme Court of Wyoming is confronted with cases which make it necessary to construe these statutes, they will be construed in harmony with this spirit.

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THE CONSTITUTIONALITY OF CURFEW ORDINANCES

In recent years there has been a growing tendency for municipalities to enact curfew ordinances, apparently for the purpose of combatting juvenile delinquency. That crimes of lust and violence are usually committed after darkness is judicially known.[1] Surveys show that the great majority of the larger cities have enacted some type of curfew regulation.[2] For example, the State of California took a survey in 1950 by sending a questionnaire to police departments. The survey disclosed that nearly all cities in California possessed some sort of curfew law. Some states, such as Connecticut, are contemplating a curfew for teen-age drivers, relying upon statistics which show that teen-agers have the highest accident rate.[3] Although few Wyoming cities have adopted curfew restrictions, the ordinance enacted by the City of Casper[4] is typical of the majority of those used.

In Wyoming, as elsewhere, the legislature has the right to prescribe the powers and duties of municipalities. Upon examination of the statutes it

1. Portland v. Goodwin, 187 Ore. 409, 210 P.2d 577 (1949).
2. Curfew Laws and Juvenile Delinquency, National Probation and Parole Year Book (1950).
3. Ibid.
4. Revised Code of the City of Casper, c. 4, §§ 7-401, 7-402 (1951): "It shall be unlawful for any child under the age of sixteen years of age to loaf, loiter or play in, upon or about the streets and public thoroughfares of the City of Casper or for any such child to be upon any public street or thoroughfare after ten o'clock p.m., unless such child shall be traveling to his or her place of residence and having left his or her place of residence prior to ten o'clock p.m., or unless such child is accompanied by his or her parent or person having legal custody of said child." It may be noted that the ordinance does not provide exceptions for minors out due to an emergency, later hours on weekends, or for a written authorization signed by their parent or guardian.

seems clear that first class cities are authorized under their general welfare powers[5] to enact regulations such as curfew ordinances. General welfare clauses are provided for in the charters of the cities of Cheyenne,[6] Laramie,[7] and Rawlins.[8] Research does not disclose any similar statutes applicable to second class cities and towns. Therefore, it is questionable whether these municipalities have the authority to enact curfew ordinances.

Curfew regulations are not new. The war powers of Congress were used during World War II as the basis for such laws, as part of the system of national defense. In *Hirabayashi v. United States*[9] pursuant to an executive order of the President in February 1942, the military commander of the Western Defense Command issued an order requiring all persons of Japanese ancestry within a designated area to be within their places of residence between the hours of eight o'clock p.m. and six o'clock a.m. The plaintiff was an American citizen of Japanese ancestry convicted of violation of the curfew. The United States Supreme Court held that the order was constitutional; that in light of the circumstances and of all the facts there was a reasonable basis for the curfew, since the government may take steps necessary to prevent espionage in time of war in an area threatened by a possible enemy attack, and for the purpose of preventing danger to the United States. However, in a similar case[10] the Court cautioned that it would subject to great scrutiny any restrictions which curtail the rights of a single racial group. Thus the equal protection clause imposes a limitation on curfew laws, and under normal circumstances a curfew law which singles out a racial group will be unconstitutional. As Justice Stone stated in the *Hirabayashi* case:[11]

> In order for a curfew ordinance to be held constitutional, as to certain racial groups, the inquiry is whether there is a threat to public safety, and whether the curfew is enacted because of war or due to ancestry.

Turning to the usual curfew ordinance, an investigation of these ordinances in cities throughout the United States indicates that there is no uniformity as to age. Generally, such ordinances apply to minors under the age of seventeen or eighteen years. In respect to hours, ordinances vary with local conditions; typically the deadline is ten or eleven o'clock.

It is interesting to note that there are very few purely curfew ordinance cases which have reached a court of last resort. The first reported decision on the question involved was *Ex parte McCarver*[12] decided in 1898. The *McCarver* case involved a prohibition against minors under the age of

5. Wyo. Comp. Stat. § 29-338 (1945); Wyo. Comp. Stat. § 29-201 (1945), defines cities of first class as all cities having more than four thousand inhabitants.
6. Wyo. Comp. Stat. § 29-3418 (1945).
7. Wyo. Comp. Stat. § 29-3319 (1945).
8. Wyo. Comp. Stat. § 29-3519 (1945).
9. 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943).
10. Korematsu v. United States, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944).
11. Hirabayashi v. United States, 320 U.S. 81, 104, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943).
12. 39 Tex.Crim. 448, 46 S.W. 936 (1898).

twenty-one years being on the streets later than fifteen minutes after the ringing of the curfew bell in Graham, Texas, except if in the company of parents or in search of a doctor.[13] The Court of Criminal Appeals of Texas held that the ordinance was unreasonable on the ground that it was an undue invasion of the personal liberty of citizens even if they were under twenty-one. Although the court did not single out a particular constitutional provision, the opinion as a whole indicates that the due process clause was violated.

The Texas decision has not been expressly overruled, but in *People v. Walton*,[14] the California court declared that it is out of step with the weight of authority dealing with the right of municipalities to pass laws for the protection of minors. The problem in the *Walton* case was the constitutionality of a curfew ordinance against minors remaining or loitering upon the streets of Los Angeles between nine o'clock p.m. and four o'clock a.m. unless they had a written permit from the sheriff.[15] In upholding the ordinance as constitutional, as against the defendant's contention that the ordinance was arbitrary and discriminatory in that minors over eighteen years of age and adults were excluded from the provisions, the California court declared that the Fourteenth Amendment does not interfere with the states' power to prescribe regulations to promote the peoples' health and welfare. The court made much of the point that minors constitute a class distinct from adults; hence any legislation enacted for the protection of minors does not violate the equal protection clause if otherwise reasonable.

Alves v. People,[16] another California decision, is the most recent case in point on this subject. There a curfew ordinance was held to be unconstitutional as an unlawful invasion of personal rights and liberties, and therefore a violation of the due process clause. The curfew restriction provided that it would be unlawful for any minor under seventeen years of age to be out between ten o'clock p.m. and five o'clock a.m. in the city of Chico, unless accompanied by his parent or guardian, or unless the youth

13. 39 Tex.Crim. 448, 46 S.W. 936 (1898), in which the Graham City ordinance was quoted as follows: "Section 1. Any person under the age of twenty-one years who shall be found upon any of the streets or alleys of the City of Graham at night, and later than fifteen minutes after the ringing of the curfew bell as hereinatfer provided, shall be guilty of a misdemeanor. Section 2. Be it further ordained that the foregoing section shall not apply to any person under the age of twenty-one years, who shall at the time of being so found upon the streets or alleys of said city be accompanied by his or her parent or guardian, or to any person or persons in search of the services of a physician, provided such person or persons at the time of being so found is actually executing such errand."

14. 70 Cal.App.2d 862, 161 P.2d 498 (1945).

15. The ordinance of Los Angeles County provided: "Section 3. If it is necessary for any minor under the age of eighteen years to remain or loiter upon any street, highway, avenue, alley, public park, or public place between the hour of nine o'clock p.m. and four o'clock a.m. of any day, the parent or guardian of such minor may file with the Sheriff an application for a permit to allow such use of such streets, highways, alleys, or public places, at such time by such minor as is necessary."

16. 148 Cal.App.2d 426, 306 P.2d 601 (1957).

was required to be out by reason of some legitimate job or business.[17] In the *Alves* opinion the court discussed the *Walton* and *McCarver* cases at great length. The opinion noted that in the earlier California case the prohibition was against a minor who *remained* or *loitered* upon a public street. The ordinance in the *Walton* case did not restrict those minors who were using the streets while actually in the process of going to or from places of business or amusement.[18] It was pointed out that presence on the street for the purpose of summoning a doctor would have been permissible under the Texas ordinance involved in the *McCarver* case, but unlawful under the present one. The Los Angeles County ordinance, involved in the *Walton* case, had none of the broad restrictions of either the *McCarver* or the *Alves* cases. While the ordinance in the latter case would control juveniles by preventing loitering by minors in public places, the court declared that it was unreasonable because it entirely prohibited all minors from many legitimate activities. For example, ball games, dances, library study and school activities, even with the proper chaperones, would be prohibited by the restrictions in the *Alves* case. In contrast, the ordinance in the *Walton* case is similar to those forbidding loitering, which have been held constitutional.[19]

Speaking generally, in interpreting statutes on the question of constitutionality, the courts will strive to find the statute valid and not arbitrary.[20] If any enactment can be given a reasonable interpretation consistent with its validity, such interpretation will be adopted.[21] But consideration must always be given to the due process and equal protection clauses of the Fourteenth Amendment.[22] As the Supreme Court of Oregon observed in *Portland v. Goodwin*,[23] a vagrancy case, the real question is whether ordinances bear a sufficiently close relation to the peace, safety and welfare of the community so as to justify the inconvenience to which law abiding citizens may occasionally be subjected. It is well settled that the Fourteenth Amendment does not prohibit government regulations for the public welfare if they are consistent with due process.[24] Likewise, the equal protection clause of the Fourteenth Amendment assures state citizens equality of right, but does not restrain the normal exercise of governmental powers exercised for the health, safety and welfare of the community,[25] when all persons similarly situated are equally protected in all rights.[26] The cases indicate that the due process and equal protection clauses are not violated by the enactment of curfew ordinances, provided that they are designed to meet local conditions, such as juvenile delinquency, for

17. Section 702, Chico Municipal Code.
18. Supra note 15.
19. Taylor v. Sanderville, 118 Ga. 63, 44 S.E. 845 (1903); State v. Sugarman, 126 Minn. 477, 148 N.W .466 (1914).
20. Hart v. Beverly Hills, 11 Cal.2d 343, 79 P.2d 1080 (1938).
21. Guidoni v. Wheeler, 230 F. 93 (9th Cir. 1916).
22. Gartbein v. West, 74 Ore. 334, 144 Pac. 1171 (1914).
23. 187 Ore. 409, 210 P.2d 577 (1949).
24. Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469 (1934); Price v. Kamps, 68 Wyo. 83, 229 P.2d 927 (1951).
25. Supra note 10.
26. State v. Sixth Taxing District, 104 Conn. 192, 132 Atl. 561 (1926).

the benefit of the public. As the court stated in considering the ordinance in *People v. Walton*:[27] "It is no valid objection to a police regulation that it prevents a person from doing something that he wants to do, or that he might do if it were not for the regulation."

The enactment of a curfew ordinance by any municipality must meet the basic standard of reasonableness.[28] And whether a state passes a curfew law, a quarantine law, or a law to establish courts, in every case it exercises the same power, the power to govern men.[29] Practically every court of record, including the Supreme Court of Wyoming,[30] has decided that the due process clause does not interfere with the police power of the state to enact laws for the general welfare of the people, provided that such laws are reasonable. It is difficult to define what is reasonable.

> But the facts which are important for the consideration of the legislature are nonetheless material to the determination of the judicial question. Four elements in the analysis of the reasonableness of the act, though closely interrelated, may be roughly distinguished: The conditions existing prior to the legislation, the effectiveness of the new rule to improve them, the deprivation resulting from the new rule, and the possibility of achieving the same benefits at a lower price.[31]

Municipal and law enforcement officials have divergent viewpoints as to the effectiveness of curfew laws in crime prevention. Most agree that curfew ordinances are useful chiefly to focus public attention on the desirability of keeping children off the streets at night.[32] But authorities believe that a curfew ordinance alone is not effective unless there are programs for examining conditions that cause young people to behave in an anti-social way.[33]

Although any curfew regulation will be adopted to meet the problems of the particular community, the decisions available may aid in drafting future ordinances. In view of the foregoing considerations a curfew ordinance must meet the test of reasonable construction. The age limit might include all minors up to the age of twenty-one, but eighteen or nineteen appears to be more desirable. Ten o'clock p.m. on week nights with the deadline extended to midnight on week ends is reasonable. An ordinance should provide an exception for minors out after the prescribed time who are accompanied by, or have a written authorization signed by their parent or guardian, and should except minors who are using the streets while actually in the process of going to or coming from any legitimate activity. An exception should also be made for any minor who is out due to an emergency. Thus drafted, an ordinance would accomplish the desired results without violating constitutional limitations.

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27. People v. Walton, 70 Cal.App.2d 862, 161 P.2d 498, 502 (1945).
28. Supra note 24.
29. Dowling, Cases on Constitutional Law, 745 (5th ed. 1954).
30. State v. Langley, 53 Wyo. 332, 84 P.2d 767 (1938).
31. Note, 30 Col. L. Rev. 360, 362 (1930).
32. John Edgar Hoover, Juvenile Delinquency and the Effectiveness of Community Action, Federal Bureau of Investigation (1950).
33. Ibid.